

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
SOUTHERN DIVISION

_____	)	
	)	
USA,	)	
	)	
Plaintiff,	)	
	)	Case No.
vs.	)	4:22-CR-00103-DN
	)	
ADRIAN JOSEPH ALVARADO,	)	
	)	
Defendant.	)	
_____	)	

DAY 2 OF 2 SUPPRESSION HEARING

BEFORE THE HONORABLE

JUDGE PAUL KOHLER

NOVEMBER 9, 2023

Reported by: Tasha A. Sisneros, RPR, CRC, CRR, CSR  
United States Federal Court  
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P R O C E E D I N G S

\* \* \*

THE COURT: Hello, everyone. We are reconvening in the United States vs. Adrian Alvarado. Case No. 4:22-CR-103. This is the continuation of the motion to suppress evidentiary hearing that we began yesterday.

Let me just ask before we call a witness of the lawyers, anything else we need to take care of before we jump back in?

MS. REDDISH-DAY: No, Your Honor. I will give the Court some indication as far as the timeline for today.

The Government has three additional witnesses because defense counsel is still indicating he wants to proceed forward on the issues to be addressed that were laid out in his initial motion, including the constitutionality of the interrogation of Mr. Alvarado.

So for -- if that issue remains and is not being rescinded or retracted, then we will be adding an additional two witnesses in addition to the one witness we are going to call next. So it will be three total instead of just one, based on those issues.

1           So unless the defense has had a change of  
2   position with regard to that, that's how we plan to  
3   proceed. Each witness should be relatively brief,  
4   but it probably will be a couple of hours total, I  
5   would imagine.

6           THE COURT: Okay. Thank you for that.  
7   Mr. Berardi, anything you would like to put on the  
8   record?

9           MR. BERARDI: Yes, Your Honor. First, my  
10   client has asked to have a continuance for today based  
11   on some of the evidence that was presented yesterday  
12   which was new to us, hadn't been provided in discovery  
13   to us, the ALRP report particularly. That information  
14   wasn't in the officer's report either.

15          So, you know, I don't know what the State knew or  
16   didn't know, but the officer definitely had  
17   information that wasn't provided. And so my client is  
18   asking for a continuance for time to ready for those  
19   things that were brought up yesterday.

20          THE COURT: Give me some additional context  
21   there. How would extra time help your motion?

22          MR. BERARDI: Well, it would allow us to get  
23   some information to address those issues with the ALPR  
24   and --

25          THE COURT: I am not clearly identifying

1    what those issues are.  You need to lay that out for  
2    me.  If you are making a motion to continue, I need  
3    more than that.

4               MR. BERARDI:  Okay.  Well, we had -- the  
5    other witness that we didn't subpoena, which we didn't  
6    know about, was that officer that was at the Maverick  
7    with Officer Tanner.

8               We know who that is now, but we didn't  
9    know about that officer before.  And we haven't  
10   heard yet from the other officer that shows up later  
11   on, the DEA or Homeland Security officer.  So, I  
12   mean, any question that goes with those guys -- I  
13   mean, we'd like some time to prep for those, you  
14   know.  They weren't witnesses that we anticipated or  
15   questions that we had anticipated from the  
16   information we had.

17              THE COURT:  Help me out.  So let's do those  
18   one at a time.  There was an officer at the Maverick.

19              MR. BERARDI:  Who follows the Defendant.

20              THE COURT:  But I am not sure what you are  
21   asking.  You want him at the hearing?

22              MR. BERARDI:  Yeah, we'd like to question  
23   him.

24              THE COURT:  Because what?  What role did he  
25   play that would be relevant to your motion?

1           MR. BERARDI: Well, because we -- our theory  
2 is that the officer -- that officer followed him from  
3 back before he gets off the ramp, and Officer Tanner  
4 was waiting there and then follows him off the ramp.

5           They had the ALPR report at that time, which is  
6 when Officer Tanner decided he was going to stop the  
7 vehicle. He then says that they pulled into the  
8 Maverick. The client is out of his vehicle and he  
9 gets gas for half an hour or so. And he has mentioned  
10 that he was going to just give him a warning.

11           Well, then why didn't he just give him the  
12 warning then? He had the half hour while my client  
13 is in the Maverick. But he doesn't, he lets him  
14 leave.

15           And then both officers pursue him again on  
16 to the highway, including that officer. Officer  
17 Tanner's testimony was -- I think yesterday was that  
18 he didn't know that that officer was going to pursue  
19 him or why he was pursuing him. You know, I think  
20 we'd like to ask the officer himself why he was  
21 following.

22           THE COURT: What connection does that have  
23 to the evidence that you are looking to suppress?

24           MR. BERARDI: Well, it goes -- it all goes  
25 to the stop. The stop comes down to the items hanging

1 off the rear-view mirror and the statute. The statute  
2 doesn't say anything about rear-view mirror -- in the  
3 statute. It doesn't state whether something -- it  
4 doesn't state that nothing can hang from the rear-view  
5 mirror. In fact, you know, like the handicap cards  
6 that you get, they are hung on the mirror.

7 THE COURT: That may be true, but what does  
8 that have to do with the officer at the Maverick?

9 MR. BERARDI: What does that have to do with  
10 the officer at the Maverick?

11 THE COURT: Yeah, you are telling me.

12 MR. BERARDI: I mean the whole thing, the  
13 whole thing shows the reason why this stop actually  
14 happened, and what they were planning at this point  
15 before anything else happens.

16 You know, Officer Tanner is saying that he  
17 decides to stop that vehicle and give him a warning  
18 for the stuff hanging from the thing.

19 THE COURT: That's not my recollection. He  
20 didn't decide to stop him and give him a warning. He  
21 decided to stop him. Later he decided to give him a  
22 warning. That was the testimony from yesterday.

23 MR. BERARDI: You mean he decides to stop  
24 him after he leaves the Maverick; is that what you are  
25 saying?



1           THE COURT: No, you are combining the stop  
2 and the decision to give him a warning. I don't  
3 remember that from yesterday.

4           He decided to stop him based on the  
5 windshield presumed violation. You can argue  
6 legally whether that's an issue or not. Later after  
7 he smelled the marijuana and so forth, he decided to  
8 give a warning as to the traffic violation.

9           You conflated those two a moment ago and  
10 said he decided to stop him and give him a warning.  
11 That's not my recollection of the testimony. But I  
12 still don't see what that has to do with the officer  
13 at the Maverick, the second officer at the Maverick.

14          MR. BERARDI: Well, because all of the  
15 officers were in cahoots together. They were all  
16 communicating.

17          THE COURT: What are you basing that on?

18          MR. BERARDI: Well, the other -- well, some  
19 of this information we have.

20          THE COURT: In cahoots to do what?

21          MR. BERARDI: To make this -- he was making  
22 this stop as a drug stop. It wasn't -- you know, the  
23 mirror thing came in, we are claiming, after the fact,  
24 I mean, as a reason to justify the stop.

25          THE COURT: Is there a legal problem with

1 that? You are not giving me anything here,  
2 Mr. Berardi.

3 MR. BERARDI: Yeah. There is a legal  
4 problem with that.

5 THE COURT: Based on what? What case says  
6 he cannot make a drug stop as long as there is a  
7 legitimate traffic violation?

8 MR. BERARDI: Okay. Give me one second.

9 THE COURT: But even then, you have got to  
10 connect it to the officer. If that's what you are  
11 saying, you didn't know about the second officer at  
12 the Maverick, therefore we need to continue today's  
13 hearing, you are not connecting any dots for me.

14 MR. BERARDI: Okay. All right. So first  
15 off, Your Honor, on the stop, the case law that I have  
16 got all says that it doesn't come down to a question  
17 of whether or not there was an actual legitimate  
18 reason for the officer to make the stop; it comes down  
19 to whether or not another reasonable officer with that  
20 same information would stop that vehicle.

21 THE COURT: I don't understand what you're  
22 saying.

23 MR. BERARDI: Okay. Utah Supreme Court  
24 case.

25 THE COURT: First of all, the Utah Supreme

1 Court does not govern this Court.

2 MR. BERARDI: I know. I understand.

3 THE COURT: I need 10th Circuit case law if  
4 you are making a motion about this to me.

5 MR. BERARDI: And I've got 10th Circuit  
6 here, too, Your Honor. So Utah -- uhm. So I've  
7 got -- let's see. 9th Circuit. The United States  
8 Supreme Court. So I've got United States vs. Smith.  
9 799 F.2d 711. We've got dealing with a stop based on  
10 a legitimate misdemeanor infraction.

11 THE COURT: All right. Here is what I'm  
12 going to do, Mr. Berardi, rather than everybody  
13 standing here watch you read from a document that I  
14 don't even know what it is.

15 MR. BERARDI: I'm sorry.

16 THE COURT: The motion to continue today's  
17 hearing is denied.

18 If you would like later to put together a  
19 written, cogent motion to add evidence that we may  
20 need, then I am happy to entertain that. But this  
21 is getting us nowhere here, and we've got witnesses  
22 waiting outside. The motion is denied.

23 Anything else?

24 MR. BERARDI: No, I just -- well, just one  
25 point of clarification.

1           So normally when I have done suppression  
2 motions, we always go first. The Court had the  
3 State go first, and so I was limited on some of the  
4 questions I could ask Tanner because --

5           THE COURT: How so?

6           MR. BERARDI: Because the issues weren't  
7 addressed in the direct examination.

8           THE COURT: But it would have been easy  
9 enough to simply say that I would like to use this  
10 witness for direct examination and ask anything you  
11 wanted.

12          MR. BERARDI: Right. And that's what I was  
13 planning on doing when the end of the day came, but --  
14 you know, I finish up the questioning with him on that  
15 subject, and then I didn't know what happened.

16          THE COURT: And then what?

17          MR. BERARDI: We called it a day.

18          THE COURT: We didn't call it a day. You  
19 finished your examination. I asked if there was  
20 anything else, you said no, and I excused the witness.  
21 If you decide you need to recall him, we can talk  
22 about that.

23          MR. BERARDI: Okay.

24          THE COURT: But I don't understand what that  
25 has to do with the --

1           MR. BERARDI: No, I just -- you said we need  
2 stuff before we started, that was a question I had, so  
3 yeah, that's why I brought it up.

4           THE COURT: Anything else?

5           MR. BERARDI: No, that's all.

6           THE COURT: Okay, at the end of -- and let  
7 me note, for the record, the reason we put the  
8 Government's case on is because you filed a motion  
9 dealing with suppression of evidence under the fruits  
10 of, you know, a poisonous tree under the exclusionary  
11 rule, correct?

12          MR. BERARDI: Correct.

13          THE COURT: That burden falls on the United  
14 States to prove that, correct?

15          MR. BERARDI: Correct.

16          THE COURT: Okay. Well, that's why they are  
17 going first. You don't have to do anything. You  
18 don't have to cross-examine. You don't have to call a  
19 witness. You don't have to do anything, so I don't  
20 understand why there's confusion here.

21          MR. BERARDI: I am just -- we have always  
22 gone first. I don't know.

23          THE COURT: Under what circumstance?

24          MR. BERARDI: What's that?

25          THE COURT: Under what circumstance are you

1 putting your case on first in a motion to suppress?

2 I can see if a judge says I want to hear  
3 some evidence on standing, or something like that,  
4 that you have to go first. But under the  
5 exclusionary rule, I don't understand what context  
6 are you talking about?

7 MR. BERARDI: Well, no, I am just -- every  
8 motion to suppress I have had -- I don't know how  
9 many -- we have gone first. I mean -- you are right.  
10 I mean when I look at it, I think they all did have  
11 issues on standing or something to that effect, so --

12 THE COURT: Okay. As the driver of the  
13 vehicle, standing was a non-issue.

14 MR. BERARDI: No. I agree. I understand  
15 what you are saying.

16 THE COURT: Okay. Very good. Then let's  
17 proceed with the evidence.

18 If after the conclusion of the  
19 Government's evidence gathering and testimony, if  
20 you want to make a motion to have additional  
21 evidence brought before the Court, I will entertain  
22 that motion.

23 Okay. Ms. Reddish-Day.

24 MS. REDDISH-DAY: Your Honor, the Government  
25 calls Deputy Dan Montgomery.

1 THE CLERK: Please raise your right hand.

2 You do solemnly swear that the testimony you  
3 shall give in the case before the Court shall be the  
4 truth, the whole truth, and nothing but the truth so  
5 help you God?

6 THE WITNESS: I do.

7 THE COURT: Will you please state your name  
8 and spell your last name for the record.

9 THE WITNESS: Daniel Montgomery.  
10 M-o-n-t-g-o-m-e-r-y.

11 DANIEL MONTGOMERY  
12 called as a witness herein by the Plaintiff,  
13 having been first duly sworn, was examined and  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. REDDISH-DAY:

17 Q And you will have to speak pretty close to  
18 that microphone, and the microphone will move closer  
19 to you as well so you can do that.

20 A Is that better?

21 Q That's better. Thank you.

22 Good morning, Deputy.

23 A Good morning.

24 Q Can you state what your occupation is for  
25 the record?

1           A     I am a lieutenant with Washington County  
2 Sheriff's Office.

3           Q     And how long have you been a Washington  
4 County Deputy Sheriff?

5           A     Since 2015.

6           Q     And how long have you been a K9 handler with  
7 the Washington County Sheriff's Office?

8           A     Since 2016.

9           Q     And did you have any other prior law  
10 enforcement duties prior to joining the Washington  
11 County Sheriff's Office?

12          A     I did not.

13          Q     And did you attend a police academy to  
14 become a Washington County Sheriff's Deputy?

15          A     I did.

16          Q     Okay. And that would have been back in  
17 2015?

18          A     2014, I believe.

19          Q     Okay. And then have you participated in  
20 additional trainings over the years in order to assist  
21 you in doing your job as a Washington County Sheriff's  
22 Deputy?

23          A     I have.

24          Q     Okay. So do you receive ongoing training to  
25 maintain your post certification?



1           A     I do.

2           Q     Okay.  And then specifically as a K9  
3 handler, you have been a K9 handler for most of your  
4 career in law enforcement; correct?

5           A     Correct.

6           Q     And you and your K9 handler partner are both  
7 certified in narcotics detection; is that correct?

8           A     Correct.

9           Q     And in order to become certified as a K9  
10 handler, do you go to a separate academy, if you will,  
11 to become a K9 handler?

12          A     You do.

13          Q     And does that involve the handling of a  
14 variety of narcotics?

15          A     Yes.

16          Q     Along with your K9 partner?

17          A     Excuse me.  Yes.

18          Q     Okay.  And do you receive continuous  
19 training with regard to identifying various narcotics  
20 in your capacity as a K9 handler?

21          A     We do.

22          Q     Okay.  And do you also carry -- in order to  
23 keep your K9 partner trained, do you carry various  
24 narcotics with you in the field?

25          A     I do.

1 Q And can you describe that for the Court?

2 A Depending on the odors that the dogs are  
3 trained on is what you would carry. Cyrus, which is  
4 my partner now, he is trained on marijuana, heroin,  
5 meth, cocaine, so I carry varying quantities of each  
6 of those.

7 Q Okay. And so you indicated that you  
8 actually carry marijuana in your vehicle?

9 A I do.

10 Q Okay. And how much marijuana do you carry  
11 in your vehicle?

12 A I have two separate marijuana hides. I have  
13 15 grams of a derivative like a dab. And then I have  
14 a couple grams shy of a pound of raw looseleaf  
15 marijuana.

16 Q Okay. And then, again, that's used -- how  
17 do you utilize that for training of your K9 partner?  
18 Why do you have it in your vehicle?

19 A We have to maintain 12 hours a week of  
20 training.

21 And more times than not, in addition to that  
22 12 hours which takes place one day a week, we try and  
23 train throughout our shift to keep the dog engaged.

24 So we will utilize those controlled  
25 substances. We will put them in a car in a

1 controlled environment for hide or we'll go and hide  
2 them in a building or something like that. Give the  
3 dogs time to get out of the car and use their nose.

4 Q Okay. And so do you do that periodically  
5 while you're on your shift in between radio calls and  
6 things of that nature?

7 A I do.

8 Q Okay. So in your frequent handling of  
9 marijuana in your capacity as a K9 handler, have you  
10 become familiar with the odor of marijuana?

11 A I have.

12 Q And have you also become familiar with the  
13 odor of marijuana based on your general duties as a  
14 patrol officer?

15 A I have.

16 Q Okay. And is there any other mechanism or  
17 training that you can describe for the Court that  
18 would allow you to identify the odor of marijuana?

19 A Each year I attend a narcotics officers  
20 conference, which is a 40-hour training. Each year  
21 there's something specific to marijuana, especially  
22 with the change of rules and laws of it.

23 One in particular was a full-day course  
24 that we actually operate a marijuana lab. So we  
25 started with primarily looseleaf marijuana. And the

1 object of the class was to learn how to change it  
2 into derivatives, whether it be a liquid, an edible,  
3 a powder derivative. So we were able to actually go  
4 through and break down how to operate a marijuana  
5 lab.

6 Q Okay. And based on your training and  
7 experience, is it your belief that marijuana has a  
8 distinctive smell?

9 A It does.

10 Q And can you describe how you would describe  
11 the odor of marijuana based on your training and  
12 experience?

13 A Everybody always says it smells like skunk.  
14 In a certain way to me skunk smells more -- this is  
15 going to sound strange -- like an eraser. If you  
16 erase something really hard, you have a burnt rubbery  
17 smell. Skunk smells like that. Marijuana smells like  
18 that minus the rubber.

19 Q Is it -- do you know it when you smell it?  
20 Is your training and experience significant enough  
21 that you just -- you know it when you smell it?

22 A I do.

23 Q Are you able to distinguish between the  
24 smell of raw marijuana and burnt marijuana?

25 A Yes.

1           Q     Okay.  So let me turn your attention to  
2     August 29, 2022.

3                     Were you on duty that evening at  
4     approximately 20:30 hours, right around there,  
5     20:30-20:40 hours?

6           A     I was.

7           Q     And did you receive a call from Officer  
8     Tanner to assist him on a traffic stop?

9           A     I did.

10          Q     And did you receive that call while he was  
11     en route to the traffic stop to make the actual  
12     traffic stop?

13          A     I did.

14          Q     Okay.  And where were you, if you recall,  
15     when you received that call from Officer Tanner?

16          A     I was doing focus patrol in the Town of  
17     Leeds.  And moving back towards -- south towards the  
18     freeway via --

19                 THE COURT REPORTER:  Via what?

20                 THE WITNESS:  Quail Lake.

21     BY MS. REDDISH-DAY:

22                 Q     Yeah.  You'll have to speak up a little bit.  
23     As you talk, you get a little bit quieter?

24                 A     Sorry.  I was heading from the Town of Leeds  
25     south along Highway 318 which is the Quail Lake Road.

1           Q     Okay.  So you were coming by Quail Lake when  
2     you received the call from Officer Tanner?

3           A     Correct.

4           Q     And did he -- did Officer Tanner indicate to  
5     you where he was going to be making a traffic stop?

6           A     He did.

7           Q     And where did he indicate to you?

8           A     We spoke briefly about where I was coming  
9     from.  And based on that, he decided that it would be  
10    north of exit 16 so that I would have to go south on  
11    the freeway to flip in the median and come back to 16.

12          Q     Okay.  So you were driving near the lake and  
13    you headed towards mile -- approximately mile marker  
14    16 on Interstate 15; is that correct?

15          A     Correct.

16          Q     Okay.  And then when you arrived, was there  
17    a vehicle that was, in fact, stopped in that location  
18    by Officer Tanner?

19          A     There was.

20          Q     Okay.  So the stop had already been made; is  
21    that correct?

22          A     Correct.

23          Q     And can you describe the vehicle generally  
24    that Officer Tanner had stopped at mile marker 16?

25          A     It is a smaller compact SUV.  I don't recall

1 the color of it. Just a general kind of nothing  
2 special SUV.

3 Q A small SUV?

4 A Yeah.

5 Q Okay. And do you recall how long it took  
6 you to arrive from when you first got the call?

7 A Time wise I don't. I know it's -- from  
8 Quail it is a mile or two miles to the freeway, and  
9 then a quarter of a mile to the traffic stop. So less  
10 than three miles probably, about three to four  
11 minutes.

12 Q That's a relatively short distance, correct?

13 A Correct.

14 Q And so when you first arrived, what was your  
15 first observations? Was Officer -- with regard to who  
16 was present at the scene?

17 A When I exited my vehicle, Officer Tanner was  
18 walking back to his from the violator vehicle. He was  
19 walking back to his driver's side door.

20 Q When you say his, so Officer Tanner was  
21 walking back to his patrol vehicle, driver's side  
22 door?

23 A Correct.

24 Q Okay. And did you have an interaction with  
25 Officer Tanner as you arrived and Officer Tanner was

1 walking back to his patrol vehicle?

2 A I did.

3 Q And what -- can you describe that  
4 interaction with Officer Tanner?

5 A Officer Tanner advised me that the driver  
6 didn't want to exit his vehicle. Typically when we do  
7 that, sometimes somebody is a little more agreeable  
8 with one of us versus the other one.

9 So at that point I knew that I would go up  
10 there and talked to him. He also advised me that he  
11 did detect the odor of marijuana.

12 Q Can you repeat that?

13 A He also advised me that he could detect the  
14 odor of marijuana coming from the vehicle.

15 Q And then Officer Tanner asked you to help  
16 remove him from the vehicle?

17 A Correct.

18 Q And then what would be the reason for  
19 removing the driver from the vehicle based on what  
20 Officer Tanner told you?

21 A Based on the odor, we were going to conduct  
22 a probable cause search. So for our safety all  
23 occupants are invited out of the vehicle and stood off  
24 to the side of the road.

25 Q Okay. So then did you do so after Officer



1 Tanner asked you to ask the driver to exit the  
2 vehicle?

3 A I did.

4 Q Okay. And when you approached the subject  
5 vehicle, the small SUV, how did you approach the  
6 vehicle, on the driver's side or passenger's side?

7 A The passenger's side.

8 Q Okay. And what observations did you first  
9 make when you approached the passenger side of that  
10 vehicle?

11 A I approached every vehicle the same. I come  
12 up and I look through the back windows. And as I am  
13 moving towards the front of the vehicle, I cleared  
14 each window that I walked past. I got up to the front  
15 passenger window, which was open, and observed the  
16 driver sitting there. I made conversation with the  
17 driver and invited him out.

18 Q Was the driver the only occupant in the  
19 vehicle?

20 A He was.

21 Q What observations, if any, did you make as  
22 you were scanning the -- into the -- you said you were  
23 looking into the vehicle as you were approaching the  
24 passenger window?

25 A Correct.

1           Q     Did you make any observations in doing so?

2           A     I did. I could see a couple of cardboard  
3 boxes in the rear storage area that were pretty  
4 heavily taped.

5           Q     Okay. And why are you looking into a  
6 vehicle like that when you are approaching it?

7           A     So my job assignment is criminal  
8 interdiction specializing in smuggling enforcement,  
9 particularly narcotics. So I want to see what's in  
10 there.

11                     Also, as I am walking past the vehicle, I  
12 want to know what I am going to be walking past to  
13 turn my back to while I am engaged with somebody in  
14 conversation.

15           Q     Okay. Are you looking to see, perhaps, if  
16 there's other occupants in the vehicle as well that  
17 might place you in some danger?

18           A     Correct.

19           Q     Okay. And so then you approached the  
20 passenger window of the small SUV. And you said the  
21 window was down; is that correct?

22           A     Correct.

23           Q     And then what observations did you make  
24 next?

25           A     In speaking with the driver, we spoke

1 briefly about something that he was fumbling with.

2 And then when I asked him to hop out, I had already  
3 detected the odor of marijuana, and I documented that  
4 on to my body camera while speaking to it.

5 Q When you say documented that on your body  
6 cam by speaking to it, what do you mean exactly?

7 A Like a form of narration. It helps me later  
8 on when writing my report. So I will just lean down  
9 and talk to my body camera.

10 Q So you're documenting what you are doing for  
11 your body camera to capture for later; is that  
12 correct?

13 A Correct.

14 Q And so you did so in this case?

15 A I did.

16 Q And can you describe exactly what you -- did  
17 you smell the odor of marijuana immediately upon  
18 arriving at the passenger side window?

19 A I did.

20 Q Can you describe that odor?

21 A With all the other windows up, the wind was  
22 sucking it out of that one window. So right when you  
23 put your face down to that window to talk to the  
24 occupants of it, that's all you get is the odor of the  
25 car. So it was very overwhelming.

1 Q So you would classify it as an overwhelming  
2 odor of marijuana?

3 A Correct.

4 Q And based on your training and experience  
5 that you described, did you have a sense of whether --  
6 did you have a sense of approximately how much  
7 marijuana may be in that car, if it would be a small  
8 amount or a large amount? Did you have any idea at  
9 that point?

10 A Based on the smell alone, no, but everything  
11 I was seeing in conjunction with the odor led me to  
12 believe it was going to be a large amount.

13 Q Okay. And then what did you do next after  
14 smelling the overwhelming odor of marijuana?

15 A I invited the driver to hop out and speak  
16 with me, to which he did. He exited out the front of  
17 the vehicle and I met him up there.

18 Q Okay. And did -- was that occupant of the  
19 vehicle Mr. Alvarado?

20 A It was.

21 Q And did he exit the driver's side willingly  
22 at your request?

23 A He did.

24 Q Was Mr. Alvarado cooperative with you?

25 A He was.

1           Q     Okay.  And did you have your K9 partner with  
2 you that day?

3           A     I did.

4           Q     And why did you not deploy your K9 partner  
5 that day on that vehicle?

6           A     We already had the probable cause to search  
7 the vehicle based upon the odor of marijuana.  So  
8 there's no need to stack up and stack up and stack up  
9 probable cause.

10          Q     Okay.  So if you smell it, you don't need  
11 your dog to also smell it as well; is that a fair  
12 statement?

13          A     Correct.

14          Q     Okay.  And just to be clear, you smelled the  
15 odor of marijuana yourself, not just based on what  
16 Officer Tanner told you; is that correct?

17          A     Correct.

18          Q     And then once Mr. Alvarado was out of the  
19 vehicle, then what did you do next?

20          A     I stood with him at the front passenger side  
21 of his vehicle, kind of off to the shoulder a little  
22 bit while Officer Tanner came back up and spoke with  
23 him.

24          Q     Okay.  And then did you and Officer Tanner  
25 together speak with Mr. Alvarado roadside near his

1 SUV?

2 A We did. It was mostly Officer Tanner  
3 speaking. I was present, but yes.

4 Q Okay. And do you recall Officer Tanner  
5 providing Mr. Alvarado his Miranda rights?

6 A I do.

7 Q. And do you recall what if anything  
8 Mr. Alvarado said at that time to you and Officer  
9 Tanner?

10 A In reference to the Miranda or just in  
11 general?

12 Q After he -- let me ask you this then.

13 After Officer Tanner provided his Miranda  
14 rights, did -- based on your recollection, did  
15 Mr. Alvarado agree to speak with the two of you?

16 A I believe so, yes.

17 Q Okay. Do you recall what if any statements  
18 he made at that time to you about the marijuana in the  
19 vehicle?

20 A That there wasn't any marijuana in the  
21 vehicle, and that he doesn't use marijuana. We just  
22 reiterated the fact that based on the odor, we  
23 believed there to be marijuana in there and that we  
24 would be searching.

25 Q Okay. And so I am going to remind you again

1 to speak up a little bit.

2 A Sorry.

3 Q No problem. Everybody requires a few  
4 reminders. Don't worry about it.

5 So he denied there was marijuana in the  
6 vehicle and he denied that he smokes marijuana; is  
7 that correct?

8 A Correct.

9 Q Okay. And at that point, what was your  
10 intentions to do with regard to the SUV vehicle that  
11 Mr. Alvarado was driving?

12 A To assist him in a probable cause search of  
13 it.

14 Q And probable cause of what at that point?

15 A At that point with the odor of marijuana  
16 being in there, it is reasonable to believe that there  
17 is marijuana in there. So we were going to  
18 investigate the crime of possession of marijuana.

19 Q Okay. Were you also investigating the crime  
20 of potentially possession --

21 MR. BERARDI: Objection. Leading.

22 THE COURT: Overruled.

23 BY MS. REDDISH-DAY:

24 Q Were you also investigating the potential  
25 that there was a large amount of marijuana in that

1 vehicle that would be beyond possession amount?

2 A Yes.

3 Q Okay. And specifically what crime were you  
4 investigating?

5 A The possession with intent to distribute  
6 marijuana.

7 Q And you are a drug interdiction officer,  
8 correct?

9 A Correct.

10 Q Okay. Can you describe, just briefly for  
11 the Court, what that is and what those duties are for  
12 you?

13 A So I am assigned locally at the county level  
14 to our K9 unit, which is the criminal interdiction  
15 specializing in narcotics smuggling.

16 And then also assigned to Department of  
17 Homeland Security through HSI and ICE for the same  
18 thing. I work on the Federal Task Force part.

19 Q Okay. Thank you. So you -- you and Officer  
20 Tanner were going to engage in a search of the  
21 vehicle; is that correct?

22 A Correct.

23 Q Okay. And that was based on your probable  
24 cause belief that there was marijuana in the vehicle?

25 A Correct.



1           Q     And the Defendant indicated to you he didn't  
2 smoke marijuana or there wasn't marijuana?

3           A     Correct.

4           Q     Okay. So then what did you do next? Did  
5 you begin the search of the vehicle at that point?

6           A     We did. I spoke with Mr. Alvarado for a  
7 minute. And then once he was off to the side, we  
8 began the search.

9           Q     Okay. And where specifically did you begin  
10 the search?

11          A     I started at the rear of the vehicle, the  
12 hatch.

13          Q     And why did you start there?

14          A     Previously I had mentioned that I saw those  
15 boxes. Those piqued my interest, along with the  
16 marijuana. So that's where I started -- I wanted to  
17 see what was in the boxes.

18          Q     So did you open the back hatch of the  
19 vehicle?

20          A     I did.

21          Q     And then what was your first observation  
22 when you opened the back hatch of the vehicle?

23          A     I had seen the boxes earlier with the tape.  
24 And I opened it and I confirmed that it was taped,  
25 like heavily taped, which is pretty common when people

1 are transporting marijuana; they're trying to lock in  
2 that odor so it can't be smelled. So I leaned into  
3 the largest of the boxes and cut it open.

4 Q Okay. That was the first thing you did?

5 A I believe so, yes.

6 Q And were there other bags and containers and  
7 things like that in the trunk as well?

8 A There were.

9 Q And when you opened that first cardboard  
10 box, what did you locate?

11 A There's some sort of like a garment  
12 covering. I don't know if it was a towel or a shirt  
13 or something. On removing that, I could see the  
14 vacuum-sealed packages of marijuana.

15 Q Okay. And when you say vacuum-sealed  
16 packages of marijuana, how big were those  
17 vacuum-sealed packages of marijuana in that first box;  
18 do you recall?

19 A Typically they are sealed as one pounds.  
20 Sometimes you get flat ones that are like the size of  
21 maybe a phone book and they're very pressed. Other  
22 times we get ones that are about the size of maybe a  
23 football because they are rolled and rounded. These  
24 were fairly flat so they were a little bit bigger than  
25 this screen I would say.

1 Q The screen that's in front of you?

2 A Correct. Maybe a little over a foot each  
3 direction.

4 Q Okay. And based on your training and  
5 experience, did you have a sense of how much marijuana  
6 was in each of those bags in the first cardboard box?

7 A Yes.

8 Q What was your estimate of how much marijuana  
9 was in each of those bags?

10 A Maybe one pound each.

11 Q And was marijuana found -- did you -- after  
12 you found marijuana in that first box, what did you do  
13 next?

14 A I advised Officer Tanner that -- of what I  
15 had found.

16 Q And how did you do that?

17 A We had a little silly code we do just called  
18 bang-bang. It lets us know -- it lets me and Officer  
19 Tanner know that we know what is going on. And it  
20 keeps us from allowing the potential suspects at that  
21 time to know that we know what is going on.

22 Q What is the reason for that? Why don't you  
23 want subjects to know that you found narcotics in  
24 their vehicle?

25 A A lot of times it will initiate a fight or

1 flight. I don't want to run after anybody and I don't  
2 want to fight anybody so.

3 Q So those are the code words that you and  
4 Tanner have come to, to indicate to each other that  
5 narcotics have been found is bang-bang?

6 A Correct.

7 Q And you did so in this case?

8 A Yes.

9 Q And do you recall ultimately how much  
10 marijuana was located in that vehicle?

11 Well, first of all, let me ask you, did you  
12 engage in a thorough search of the vehicle with  
13 Officer Tanner?

14 A I did.

15 Q And the two of you searched that vehicle  
16 together; is that correct?

17 A Correct.

18 Q Do you recall how much -- approximately how  
19 much marijuana was located during the search?

20 A If I remember right, it was just over  
21 20 pounds. Maybe between 20 and 25 pounds.

22 Q Okay. And were you wearing a body camera on  
23 that evening?

24 A I was.

25 Q Are you always wearing a body camera when

1 you are on duty?

2 A I am.

3 Q And when do you activate your body camera  
4 generally?

5 A Whenever I conduct a traffic stop or have  
6 dealings with the public in my official capacity.

7 Q Okay. So it is not on all the time while  
8 you are driving around paroling; is that correct?

9 A Correct.

10 Q But you activate it prior to making any  
11 contact with the suspect?

12 A Correct.

13 Q Or the vehicle?

14 A Or the vehicle or just a general -- official  
15 conversation with somebody as an officer instead of  
16 just like a casual conversation.

17 Q Okay. So in this case, do you recall  
18 activating your body camera?

19 A I do.

20 Q And when do you recall activating it?

21 A As I was pulling up to the traffic stop.

22 Q Okay. So I am going to -- we are going to  
23 play a portion of your body camera. The entire body  
24 camera is 33 minutes and 32 seconds and has been  
25 admitted as Government's Exhibit 2.

1           We can pause it for a second. So I am going  
2 to -- just for your benefit, I am not sure how well  
3 you can see the screen. It is a little bit dark.

4           A     Yes.

5           Q     But what I am going to do is I am going to  
6 play the first five minutes or so of this body camera  
7 footage, and then I will ask you some follow-up  
8 questions.

9           A     Okay.

10          Q     So if you want to just follow along while  
11 we're playing it.

12          A     Sure.

13          Q     And then the Court will have an opportunity  
14 to view the entire body camera footage, should it  
15 choose to do so.

16                   (Government's Exhibit No. 2, Video played)  
17 BY MS. REDDISH-DAY:

18          Q     So we are pausing the video at about five  
19 minutes. So based on that, were you able to see most  
20 of that or all of that?

21          A     Yes.

22          Q     Okay. And at one point during the video, at  
23 about 3:24, you say bang-bang. Is that in reference  
24 to what your testimony was earlier?

25          A     Yes.

1           Q     Okay. And is that the point in time when  
2 you first discovered the marijuana in the vehicle?

3           A     It is.

4           Q     Okay. And was that the -- we can see you  
5 opening a box. Was that the box that had the first  
6 marijuana that you located in that vehicle?

7           A     It is.

8           Q     Okay. And then you indicated bang-bang to  
9 Officer Tanner. And then you began to walk towards  
10 the Defendant, correct?

11          A     Correct.

12          Q     Okay. And what was the purpose of that?

13          A     To place him under arrest.

14          Q     Okay. So that you would be -- now, we can  
15 see in the video that Officer Tanner is the one that  
16 actually handcuffed the Defendant, correct?

17          A     Correct.

18          Q     Okay. But you knew he was going to be  
19 arrested?

20          A     Correct.

21          Q     And is that your practice to be present next  
22 to your partner officer when making an arrest?

23          A     It is.

24          Q     Okay. And why is that?

25          A     For safety, the person gets defiant or they

1 run.

2 Q Okay. And then we see you placing -- or on  
3 the way to place the Defendant into a patrol vehicle,  
4 correct?

5 A Yes.

6 Q And why was that done?

7 A To secure him. That way we can finish the  
8 search of the vehicle.

9 Q Okay. So he remained handcuffed after you  
10 placed him in the vehicle?

11 A He did.

12 Q Okay. And then what was your purpose in  
13 that, what were you going to be doing next?

14 A To continue the search of the vehicle. Make  
15 sure to search it in its entirety.

16 Q And did you do so?

17 A We did.

18 MS. REDDISH-DAY: If we can hit play again.

19 (Video played)

20 MS. REDDISH-DAY:

21 Q So the box that we see in that video that  
22 was just pulled out of the vehicle just prior to being  
23 paused, is that the box that contained that first  
24 amount of marijuana that you located?

25 A The larger box that Officer Tanner pulled,



1 yes.

2 Q Can we rewind that, thank you, and freeze it  
3 there. Now we can -- that's good, thank you.

4 And that's at -- what minute is that? 5:18.  
5 I don't have a time stamp on my screen, unfortunately.

6 So can you see a box in that video?

7 A I can.

8 Q Screen shot?

9 A Yes.

10 Q Can you describe what that is?

11 A It is a brown cardboard box with tape on  
12 each side and a white garment on top and the marijuana  
13 packages below that.

14 Q Okay. And that's the box that you were  
15 testifying to earlier, correct, where you found the  
16 first amount of marijuana?

17 A It is.

18 Q And then was there additional marijuana  
19 found in other places in this cargo area?

20 A There was.

21 Q And do you recall where?

22 A I believe the chip box had it in it. The  
23 smaller cardboard box that I had removed just prior to  
24 this still shot, and then I believe there's also a  
25 duffel bag that had some marijuana in it.

1           Q     Okay. And in looking at this screen shot,  
2     it is a little bit dark, but do you recall the setup  
3     of this SUV vehicle? Was the cargo area open to the  
4     passenger and driver compartment of the vehicle?

5           A     It's got a row of seating that blocks it,  
6     but over the top is open.

7           Q     Okay. So air can flow through from the  
8     cargo area to the driver's area of the vehicle; is  
9     that correct?

10          A     Correct.

11          Q     There's no barrier like there would be in a  
12     trunk, for example?

13          A     Right. There's no partition.

14          Q     Okay. So anything that's in the back cargo  
15     area, if there was smells coming from the back cargo  
16     area, it is possible the smells would go into the  
17     passenger compartment of the vehicle as well; is that  
18     fair to say?

19          A     Correct.

20          Q     Just based on the setup?

21          A     Yes.

22                MS. REDDISH-DAY: So if we can hit play  
23     again, Ms. Fano. I am going to ask Ms. Fano to stop  
24     it there and rewind it back to 5:05, the time on the  
25     bottom of that screen, and then play from there.

1 (Video played)

2 MS. REDDISH-DAY: You can go ahead and pause  
3 it there, if you want. Thank you. I have nothing  
4 further of this witness at this time, Your Honor.

5 THE COURT: Very good. Cross-examination?

6 MR. BERARDI: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. BERARDI:

9 Q Officer Montgomery, when you arrive at a  
10 scene, do you call dispatch to let them know you are  
11 there?

12 A Typically, yes.

13 Q Do all officers have to do that?

14 A It's a safety concern if we don't, but I  
15 can't say that everybody does.

16 Q Is what?

17 A I can't say that everybody does; but you  
18 should, yes.

19 Q And did you do that in this case?

20 A I believe so.

21 Q And how about Officer Tanner; do you know?

22 A If he --

23 Q Did he call in that he was making a stop?

24 A Yes.

25 Q Okay. And I have what is marked Defense

1 Exhibit 1, and it is part of the Cad log.

2 On the very bottom there, is that -- one of  
3 those numbers your call sign? The bottom three.

4 A Yes.

5 Q Okay. Would you speak up a little bit.

6 A Yes.

7 Q How -- now, this shows that all three of you  
8 arrived at the same time. How is that?

9 A So on-site call means that's when the call  
10 is actually generated. So we were on scene prior to  
11 that. That's just when dispatch created a call.  
12 Because traffic stops are not created as an incident.

13 Q So traffic stops are not created as an  
14 incident. And this is -- what is this time  
15 indicating?

16 A The time that an incident was created. So  
17 when Officer Tanner radioed to dispatch for what you  
18 said, having said 35, which is the ten code for drugs,  
19 dispatch then creates the call and attaches all of us  
20 to it. That's why it shows, the succession time  
21 stamp.

22 Q What does the "arrive" mean then?

23 A It means that the call was created and we  
24 arrive to it.

25 Q So at this time all three of you are there?

1           A     Yes.

2           Q     Okay.  So how is it that you are -- how are  
3     you all there -- what time did you first arrive at the  
4     scene then?  Was it different than this time?

5           A     Yes.

6           Q     Okay.  So what time was that?

7           A     I would have to look at the body camera on  
8     my radio logs.  I couldn't tell you for sure.

9           Q     Do you have your log up there?

10          A     I don't.

11          Q     Let's see.  Can we play that video back to  
12     the beginning when he arrives.

13                     (Video played)

14          Q     So is that 20:37 about?

15          A     I can't see it on my screen.  I'm sorry.

16          Q     It was on the upper right corner of my  
17     screen.

18          A     My screen is shifted.  I can see the lower  
19     left-hand portion of the video.

20                    THE COURT:  I will note at this point the  
21     screen does say 20:37:34.

22                    BY MR. BERARDI:

23          Q     Okay.  And when you examined that first bag  
24     of marijuana that was in the box, were those bags,  
25     were they flat and air sealed?

1           A     Relatively flat and air sealed, yes.

2           Q     Okay. And but they were still emitting a  
3     smell, correct, is that, according to your testimony?

4           A     I'm sorry?

5           Q     They were still emitting a smell?

6           A     Correct.

7           MR. BERARDI: Thank you. Nothing further.

8           THE COURT: Any redirect?

9           MS. REDDISH-DAY: No, Your Honor. Thank  
10    you.

11          THE COURT: Okay. Thank you, Deputy  
12    Montgomery. Thank you for being here today. You are  
13    excused.

14          THE WITNESS: Thank you, Your Honor.

15                   (Witness excused.)

16          THE DEFENDANT: Your Honor -- Your Honor, I  
17    want to file a motion to remove Counsel from my case.

18                 I feel that I am -- it is receiving  
19    ineffective counsel right now. And I don't really  
20    want to proceed with this hearing until I can --

21          THE COURT: I am happy to hear what you  
22    would like to tell me.

23          THE DEFENDANT: Okay.

24          THE COURT: Here is what I'd like to do in  
25    that regard. A couple of concerns I have. One is

1     that we have witnesses out here.

2                 But let's take a five-minute recess.  If  
3     you'd like to talk in private with Mr. Berardi, I  
4     will give you that opportunity.  But you don't have  
5     to, that's up to you.

6                 But I want to take a five-minute recess  
7     here to give you that chance, and to give  
8     Ms. Reddish-Day also a chance to collect thoughts  
9     here if there is a motion pending.  Does that make  
10    sense to you?

11                THE DEFENDANT:  It does.  I just don't feel  
12    like we are completely ready for this hearing.

13                THE COURT:  Okay.  I understand.  I want you  
14    to take just that five minutes, think about it for a  
15    minute.  I am going to let you stay here in the  
16    courtroom if you would like so that you can chat  
17    comfortably with Mr. Berardi.

18                The deputies will stay here.  But if anybody  
19    else needs to leave for that open conversation, then  
20    the Deputy has the authority to just kind of clear the  
21    courtroom.  I will give you five or ten minutes just  
22    to think, chat about that for a minute, and give the  
23    other side a moment to do that as well.

24                THE DEFENDANT:  Thank you, Your Honor.

25                         (Recess taken.)

1 THE COURT: Thank you. Be seated. Okay.

2 We are back on the record.

3 A few moments ago, Mr. Alvarado indicated  
4 that he may be in a position where he is looking to  
5 change attorneys or at least not move forward with  
6 Mr. Berardi.

7 Let me just give a chance to flesh this out  
8 on the record a little bit. I will start with  
9 Mr. Berardi.

10 Is there anything that you'd like to put on  
11 the record or advice you have for Mr. Alvarado that  
12 you'd like to at least known advice was given or not,  
13 anything you'd like to put on the record basically.

14 MR. BERARDI: No, Your Honor. After  
15 speaking with Mr. Alvarado, I understand his concerns.

16 I think there's a couple of impasses that we  
17 have, so I think he is right if he wants to get new  
18 counsel.

19 THE COURT: Okay. Very good. Mr. Alvarado,  
20 I will give you a chance to flesh this out in a  
21 minute, if need be.

22 But one of my concerns is that you end up  
23 saying something on the record that you wish you  
24 hadn't. But I will give you a chance here in a minute  
25 if you'd like.



1           Let me see if the Government has initial  
2 thoughts on that.

3           MS. REDDISH-DAY: Well, Your Honor, I wasn't  
4 anticipating this; but I was trying to look through  
5 the file to see when Mr. Berardi came on the case. He  
6 is retained counsel.

7           The Federal Public Defenders were previously  
8 appointed to Mr. Alvarado. And then at some point,  
9 which I haven't located that date yet, it is in the  
10 docket, Mr. Alvarado made the choice to retain  
11 Mr. Berardi.

12           Mr. Berardi and I have been in pretty  
13 regular contact since that time with regard to the  
14 issues in this case, discovery, and this particular  
15 motion to suppress. But he is a retained attorney so  
16 he certainly has the right to make a choice as to who  
17 he wants to retain on the case.

18           I just -- he has already been appointed the  
19 Federal Public Defender so that would likely no longer  
20 be an option for the Defendant. So I just wanted to  
21 make the Court aware of that, that this is now his  
22 second attorney.

23           And I would just submit to the Court's  
24 discretion, we've made it many hours through a motion  
25 hearing and have had witnesses here in the courthouse

1 for many hours and come back today to finish the  
2 motion hearing.

3 So the Government has an interest in  
4 finishing the hearing and putting on the remaining  
5 evidence in this hearing or to create a complete  
6 record.

7 But I will leave that to the discretion of  
8 the Court whether that's advisable to do so if the  
9 Defendant is now essentially letting his attorney go.

10 THE COURT: Okay. Thank you, I appreciate  
11 those thoughts.

12 Mr. Alvarado, let me note a couple of  
13 things. I don't know what my decision would be  
14 regarding this hearing moving forward.

15 What I mean by that is -- and I will first  
16 say if you want to hire another attorney, I'm going to  
17 let you do that, okay. But coming along with that, I  
18 don't know whether my decision would be to insist that  
19 a new lawyer simply pick up this hearing where we left  
20 off; or whether I would allow them to go back and  
21 cross-examine Officer Tanner and Deputy Montgomery or  
22 something like that.

23 I don't know, and I don't want to make that  
24 decision off the cuff. But I want you to know that's  
25 a possibility that I would simply insist that the

1 hearing be picked up where it's left off and not go  
2 back.

3 It is conceivable, too, that I decide this  
4 is unlikely; but again, I don't want to make decisions  
5 off the cuff, but that I would decide this was the  
6 time to examine those witnesses and I am not going to  
7 make them come back again.

8 It is unlikely, but I just want you to know  
9 there is a little uncertainty in how this decision  
10 would be made moving forward. Additionally, it is  
11 conceivable if a new lawyer came in, they would  
12 attempt to negotiate a deal with the United States  
13 sort of from scratch and see what kind of plea  
14 agreement they could work. That would certainly be a  
15 possibility, but I can't speak for the United States  
16 on whether they would be willing to entertain that as  
17 if this hearing wasn't begun or not.

18 Does all that kind of make sense to you?

19 THE DEFENDANT: It does, Your Honor.

20 THE COURT: Okay. So let me just ask you  
21 again, I don't want you to say much here on the  
22 record.

23 But is it still your intent to fire  
24 Mr. Berardi as your lawyer?

25 THE DEFENDANT: It is.

1           THE COURT: Okay. Let me ask you a couple  
2 other questions just generally about your finances.

3           And when I ask you these, I mean you  
4 particularly, not necessarily your family or friends  
5 or anybody else.

6           Do you believe you can afford to hire  
7 another lawyer at this point?

8           THE DEFENDANT: No, I don't.

9           THE COURT: Okay. I understand. In my mind  
10 that makes you -- there would be a little paperwork,  
11 but that would make you eligible for me to appoint a  
12 lawyer at no cost to you moving forward.

13           It could be the same lawyer, or we could  
14 talk about that a little bit. So that's a possibility  
15 for you.

16           Alternatively, of course, family and friends  
17 and everybody can help you out. But would it be your  
18 initial plan to have me appoint a lawyer for you or  
19 would you be willing to hire another lawyer with help  
20 of other --

21           THE DEFENDANT: Initially by appointment.

22           THE COURT: Okay. And then just see what  
23 you can do?

24           THE DEFENDANT: The last lawyer I had, he  
25 lied to me multiple times. He -- I don't know if I

1 can say this on record, but him and Angela came to the  
2 jail one time.

3 THE COURT: I am going to stop you. It is  
4 not that I don't want to hear you, and we can go into  
5 this if we need to. I just, I'm a little concerned.

6 THE DEFENDANT: That's the reason why I  
7 fired him.

8 THE COURT: And tell me who was that initial  
9 lawyer?

10 THE DEFENDANT: Rob Hunt.

11 THE COURT: Okay. And so without making you  
12 say anything more, the reason you hired Mr. Berardi in  
13 the first place was you were unsatisfied with  
14 Mr. Hunt?

15 THE DEFENDANT: Correct.

16 THE COURT: For whatever reason; is that  
17 correct?

18 THE DEFENDANT: Correct.

19 THE COURT: I understand.

20 Ms. Reddish-Day or Mr. Berardi, if you know,  
21 can you tell me the degree of work knowledge, that  
22 kind of commitment that Mr. Hunt put into the case?  
23 Or was Mr. Berardi hired pretty early on? In other  
24 words, is there any economies of having Mr. Hunt back  
25 in versus another lawyer?

1 MS. REDDISH-DAY: Well, Your Honor, it  
2 sounds as if it would be counter-productive to have  
3 Mr. Hunt back on the case because his relationship  
4 with Mr. Alvarado broke down for the reasons that only  
5 Mr. Alvarado fully knows.

6 There was a fair amount of work that  
7 Mr. Hunt put in the case. Mr. Hunt was actually  
8 advocating very strongly for Mr. Alvarado. And we did  
9 discuss this actual motion to suppress many, many  
10 times. And I was ready to proceed with a motion to  
11 suppress, but we also talked about the consequences  
12 potentially of doing so and going to trial versus the  
13 plea deal that I was willing to provide Mr. Alvarado.

14 So there was quite a bit of work that was  
15 done by Mr. Hunt prior to Mr. Alvarado making the  
16 decision to hire Mr. Berardi. But it's been some time  
17 Mr. Berardi has been on the case. He can probably  
18 speak to exactly when he was retained. I don't seem  
19 to have that here in my files.

20 I feel like the Government spent about equal  
21 time on the case with Mr. Hunt, then we started all  
22 over with Mr. Berardi. And so now it appears as if  
23 we'll have to start all over again with a new  
24 attorney.

25 THE COURT: I guess that's my question, is

1 it doesn't appear to you that based on the  
2 relationship between Mr. Hunt and Mr. Alvarado, those  
3 kind of things, it doesn't appear that it would be  
4 particularly efficient to simply bring Mr. Hunt back  
5 in on the case; is that correct?

6 MS. REDDISH-DAY: Well, it would be  
7 efficient in that he knows the case very, very well.  
8 But if there's --

9 THE COURT: But that relationship may water  
10 down that efficiency.

11 MS. REDDISH-DAY: Exactly. There could be  
12 another Federal Public Defender perhaps who could wall  
13 themselves off from Mr. Hunt if Mr. Alvarado needed  
14 that to happen.

15 But it might be safer to have a different  
16 attorney outside of the Federal Public Defenders  
17 office. But we don't get into the business of  
18 advising the Court on who to appoint specifically.

19 THE COURT: Sure. I was just saying since  
20 Mr. Hunt wasn't here, I was wondering how much we  
21 are -- in terms of historical or institutional  
22 knowledge of the case.

23 MS. REDDISH-DAY: Well, Your Honor, this  
24 case is from August of 2022. And we've -- yeah.

25 THE COURT: Let me do a couple of other

1 things.

2           So, Mr. Alvarado, I am willing to appoint  
3 another attorney for you. You can go forward with  
4 that attorney toward the end of the case. Or, as you  
5 have said, if you decide to hire another attorney, you  
6 can do that with your family.

7           But I'm convinced that you can't afford an  
8 attorney on your own right now so I will appoint one.  
9 I am going to appoint one outside the Public  
10 Defender's Office. Meaning it won't be Rob Hunt or  
11 Paul Riddle, his colleague.

12           I can't tell you off the cuff who that will  
13 be, it is kind of a random draw. But I want you to  
14 know it is very unlikely I will appoint another lawyer  
15 after this one. Does that make sense to you?

16           THE DEFENDANT: Yes, it does.

17           THE COURT: Okay. Because they are  
18 qualified, they all have to have a certain level of  
19 experience, and I am comfortable and confident with  
20 their work.

21           So you will probably be -- if you are  
22 looking for a free lawyer, you will probably be stuck  
23 with whoever I appoint next. Do you understand that?

24           THE DEFENDANT: Yes.

25           THE COURT: Okay. The other thing I want to



1 make sure you understand is while a motion to suppress  
2 is pending or while a new lawyer is getting up to  
3 speed, then I am going to pause the speedy trial  
4 calculation.

5 Okay. Meaning that whatever trial date, if  
6 you ever had one in this case, there's no time working  
7 against having that trial while we are paused because  
8 of a new attorney or because of your motion.

9 Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: Okay. Particularly important  
12 for me to know you understand that since you are in  
13 custody at this time. I don't want it to drag out  
14 unless you are part of that decision. Does that make  
15 sense?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. Here is what I am going  
18 to do then. I am going to appoint a new lawyer to  
19 represent you. I am going to put your case on for a  
20 status conference on Monday, okay, just a few days  
21 from now, to make sure that that lawyer has been  
22 named, has reached out to you, you know who it is and  
23 I am satisfied by that on Monday.

24 And then we will talk about the calendar  
25 from Monday moving forward in terms of timing, how

1 long you need with that lawyer to assess this motion,  
2 what you want to do with it, things like that.

3 Does all that make sense to you?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. Mr. Berardi, anything you  
6 would like to add?

7 MR. BERARDI: No, Your Honor.

8 THE COURT: Okay. What I am going to do, I  
9 am going to release Mr. Berardi from the case as soon  
10 as that new lawyer is appointed.

11 So, in other words, if you had a question  
12 this afternoon and you were just panicked about it or  
13 something and you wanted to talk to Mr. Berardi, I am  
14 going to make him stay on the hook until that happens  
15 no later than Monday. Okay.

16 THE DEFENDANT: I am mainly concerned with  
17 being able to address Agent Tanner again. My attorney  
18 was under the impression he was going to go second, so  
19 that's why he released him yesterday.

20 THE COURT: That's a possibility. You can  
21 challenge that lawyer about whether Agent Tanner needs  
22 to be recalled or something like that. So I want you  
23 to chat with the lawyer, sir, privately about that,  
24 maybe with Ms. Reddish-Day before I make a final  
25 decision on that.

1 THE DEFENDANT: Thank you.

2 THE COURT: Anything else we haven't put on  
3 the record at this point? Other than I am tolling the  
4 speedy trial between now and -- is there a trial date  
5 pending or has that been taken off?

6 MS. REDDISH-DAY: There is, Your Honor. I  
7 was digging for that while you were talking. And we  
8 do have a two-day jury trial set for January 16th.

9 So I understand the statute absolutely  
10 allows for the speedy trial to be tolled while the  
11 motion is pending, but I would ask that that date  
12 actually be continued or we can do so on Monday when  
13 the new attorney is appointed.

14 THE COURT: Okay. I think that is likely  
15 that a new lawyer will need some time to get up to  
16 speed for this motion before the trial.

17 But let's talk about that on Monday, maybe  
18 we can compare notes and calendars with the new  
19 lawyer; but certainly the speedy trial calendar  
20 continues to be tolled pending while this motion to  
21 suppress is pending.

22 I am not dismissing the motion until we sort  
23 this out. So it is still pending and the time is  
24 tolled between now and Monday.

25 Anything else for the record from either

1 side?

2 MS. REDDISH-DAY: No, Your Honor, thank you.

3 THE COURT: Okay. Thank you. That  
4 concludes this hearing for today. We will pick things  
5 back up on Monday. We are adjourned.

6 (Proceedings adjourned for the day at 12:13 p.m.)

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C E R T I F I C A T E

STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

This is to certify that the proceedings in the foregoing matter were reported by me, Tasha Sisneros, RPR, CRR, CSR, CRC, in stenotype and thereafter transcribed into written form;

That said proceedings were taken at the time and place herein named;

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the event thereof.

In witness whereof I have subscribed my name this 15 day of December 2023.



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Tasha Sisneros, RPR, CRR, CRC, CSR